

ORDINANCE NO. 589

AN ORDINANCE AMENDING SALES AND USE TAX PROVISIONS
OF THE MUNICIPAL CODE OF THE CITY OF LAS ANIMAS.

WHEREAS, the City of Las Animas, Colorado has certain provisions with regard to use sales tax as codified in Section 19A of the Las Animas Municipal Code; and

WHEREAS, it is the desire of the City of Las Animas, Colorado that it expand certain issues with regard to licensing of sales tax within the City of Las Animas, Colorado; and

WHEREAS, the licensing provisions are "fees" and are not associated with taxes; and

WHEREAS, the amendment of other provisions of the sales tax code are intended to be administrative and not necessarily impacting upon the tax itself, nor constituting a new tax under the context of the "Bruce Amendment";

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS ANIMAS, COLORADO:

SECTION 1. The following new sections are enacted as follows:

a. A new Section 19A-10.1 is enacted as follows:

SECTION 19A-10.1. RETAILER RESPONSIBLE FOR COLLECTION AND PAYMENT OF TAX.

(A) Every retailer engaged in business in the City shall be liable and responsible for payment of an amount equivalent to the taxable sales, multiplied by the rate established in this Chapter.

(B) TAX ADDED TO PRICE: Retailers shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the sales tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price, or if added, that it or any part thereof shall be refunded.

1. Nothing herein contained shall be deemed to

prohibit any retailer selling malt, vinous or spirituous liquors by the drink from electing to include in his purchase price any tax levied herein.

2. Sales tax may be included in the price of items sold from coin operate devices or the price of utilizing such devices.

b. A new Section 19A-10.2 is enacted as follows:

**SECTION 19A-10.2 TRUST STATUS OF TAX IN POSSESSION OF
RETAILER**

All sales or tax use collected by an retailer shall be the property of the City and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the City until paid through the State as required by Municipal Ordinance.

c. A new Section 19A-15.1 is enacted as follows:

SECTION 19A-15.1 USE TAX; METHOD OF PAYMENT

Every consumer who has not paid the sales tax to a retailer shall, unless the credit established in Section 19A-16 applies, complete the use tax schedule of a return and pay the tax due through the State as required by the Municipal Ordinance. The due date for resident individuals shall be twenty (20) days from the end of the reporting period in which the taxable transaction occurred.

d. A new Section 19A-18.6 is enacted as follows:

SECTION 19A-18.6. DUTY TO KEEP BOOKS AND RECORDS

Every person engaged in business in the City shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which will allow the accurate determination of the tax due. The date of such taxable transactions for construction projects inside the City shall be the date of the final building inspection report or the final certificate of occupancy is issued.

e. A new Section 19A-18.7 is enacted as follows:

SECTION 19A-18.7. LICENSE REQUIRED

(A) Except as provided in this Section, any person engaged in business in the City must first obtain a "Sales and Use Tax" license. No license shall be required for any governmental agency or charitable organization which is exempt from the sales and use tax under this Chapter.

(B) Any person reporting use tax on an actual cost basis for one (1) or more construction projects inside the City shall obtain a separate license for each project; except that persons who sell tangible personal property, together with the installation therefore which requires a building permit, including but not limited to satellite dishes, hot tubs, decks, patios and signs, may report tax on an actual cost basis for all projects inside the City under one (1) license.

(C) Persons exempt from business licensing under this Code shall also be exempt from any "Sales Tax and Use Tax" license.

f. A new Section 19A-18.8 is enacted as follows:

SECTION 19A-18.8. LICENSE: APPLICATION AND CONTENT

(A) Persons for whom a license is required shall first submit to the City Clerk an application stating the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as may be required by the City Clerk.

(B) Licenses which are granted shall be issued upon a one-time fee in an amount for administrative fees as established by Resolution by the City Council.

(C) Each license shall be numbered and shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.

(D) No license shall be transferable. After any sale of a business, the new owner shall apply for a new license.

g. A new Section 19A-18.9 is enacted as follows:

SECTION 19A-18.9. LICENSE CANCELLATION OR REVOCATION

(A) CANCELLATION: The City Clerk may cancel any license:

1. Upon receipt of a written notice that the taxpayer is no longer engaged in business in the City;
2. Upon the taxpayer's failure to respond to three consecutive notices of delinquency. The City Treasurer shall give notice to the taxpayer that the license has been canceled.

(B) REVOCATION: The City Clerk may, after a reasonable notice and after a full hearing, issue a finding and order to revoke the license of any person found to have violated any provision of this Chapter.

- (C) No taxpayer shall continue engaging in business within the City after their license has been canceled or revoked.

h. A new Section 19A-18.10 is enacted as follows:

SECTION 19A-18.10. TAX DEFICIENCIES FROM FAILURE TO FILE

(A) If any taxpayer neglects or refuses to obtain a license, the amount of tax due shall be estimated, based upon such information as may be available, and a Notice of Assessment shall be issued.

(B) If any taxpayer neglects or refuses to file a return by the due date, the tax due shall be estimated, based upon such information as may be available, and a Notice of Assessment shall be issued.

(C) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the Notice of Assessment.

I. A new Section 19A-18.11 is enacted as follows:

SECTION 19A-18.11. INTEREST.

(A) Interest shall be levied on any tax deficiency.

(B) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. For transactions consummated on or after October 1, 1999, the monthly interest rate shall be one and one-half percent (1 1/2%) or (18.00% per annum), unless amended by published fees as established by Resolution of the Council.

(C) When a timely protest is made to a Notice of Assessment, no additional interest shall be assessed on any tax upheld by the City Clerk for the period between the interest date of such assessment and the payment date established in an informal meeting or thirty (30) days after the date of a Findings of Fact, Conclusion and Decision issued after a hearing.

j. A new Section 19A-18.12 is enacted as follows:

SECTION 19A-18.12. NOTICE OF ASSESSMENT.

The City Clerk shall issue a Notice of Assessment for any tax deficiency, penalties, or interest due. Notices of Assessment shall be in writing and delivered in person or sent postpaid by first class mail, to the last known address of the taxpayer. The payment due date for the tax due pursuant to a

Notice of Assessment shall be stated in the Notice of Assessment.

k. A new Section 19A-18.13 is enacted as follows:

**SECTION 19A-18.13. PROTEST OF NOTICE OF ASSESSMENT OR
DENIAL OF REFUND.**

(A) Any Notice of Assessment may be protested by the taxpayer to whom it is issued.

1. Such protest must be submitted in writing to the City Clerk on or before the payment due date of such Notice of Assessment, and must identify the amount of tax disputed and the basis for the contention that the tax is not due.
2. When a timely protest is made, no further enforcement action will be instituted by the City for the portion of the assessment being protested unless the taxpayer fails to pursue the protest in a timely manner.

(B) Any timely protest entitles a taxpayer to a hearing.

1. If, in the opinion of the City Clerk, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the City Clerk may recommend an informal meeting with the taxpayer.
2. Participation in such an informal meeting does not prevent either the taxpayer or the City from holding a hearing if the dispute cannot be resolved by such meeting.

1. A new Section 19A-18.14 is enacted as follows:

SECTION 19A-18.14. HEARINGS.

(A) The City shall commence a hearing within thirty (30) days after the City's receipt of the taxpayer's written protest; except the City may extend such period if the delay is requested by the taxpayer. The City Clerk shall notify the taxpayer in writing of the time and place of such hearing.

(B) Every hearing shall be held in the City before the City Clerk.

(C) The taxpayer may assert any facts make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest.

(D) Based on the evidence presented at the hearing, the City Clerk shall issue a Findings of Fact, Conclusions, and

Decision which may modify or abate in full the tax, penalties and interest protested at the hearing, approve a refund, or uphold the assessment.

(E) Unless the decision of the City Clerk is appealed as provided in this Chapter, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the Findings of Fact, Conclusions and Decision.

m. A new Section 19A-18.15 is enacted as follows:

SECTION 19A-18.15. REVIEW OF DISTRICT COURT.

If the Petition or if an application for a refund is aggrieved at the final decision of the City Clerk, then he may proceed to have same reviewed by the District Court. The procedure of review shall be in accordance with Rule 106(1)(4) of the Colorado Rules of Civil Procedure.

n. A new Section 19A-18.16 is enacted as follows:

SECTION 19A-18.16. CIVIL ACTION TO RECOVER TAX DUE.

(A) Any unpaid tax due shall constitute a debt of the taxpayer to the City and the City Clerk may direct the City Attorney to file a civil action to collect such tax due.

(B) The return filed by a taxpayer or the Notice of Assessment issued by the City Clerk shall be prima facie proof of the tax due.

o. A new Section 19A-18.17 is enacted as follows:

**SECTION 19A-18.17. VIOLATIONS; SUMMONS AND COMPLAINTS;
PENALTY**

(A) It shall be a violation of this Chapter to fail to perform any applicable affirmative duty specified in this Chapter, including, but not limited to:

1. The failure of any person engaged in business in the City to obtain a license.
2. The failure of any taxpayer to file a timely return or to make timely payment of any tax due.
3. The making of any false or fraudulent statement by any person in any return, Claim for Refund, or hearing.
4. The evasion of collection of any sales tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

(B) The City Clerk may direct the issuance of a complaint and summons to appear before the Municipal Court of the City to any person who may be in violation of this Chapter or of the rules and regulations promulgated by the City Clerk to enforce this Chapter.

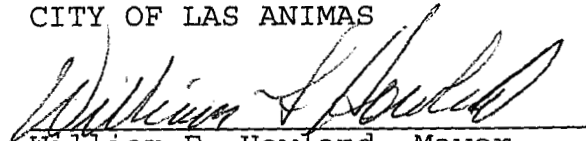
(C) Violations of this Chapter shall be punished by a fine of not more than \$1,000.00 or imprisonment of not more than 180 days or both. Each and every twenty-four (24) hour continuation of any violation shall constitute a distinct and separate offense.

SECTION 2. This Ordinance shall become effective on October 1, 1999.

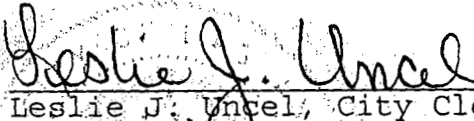
ADOPTED on first reading this 13th day of July, 1999.

PASSED on second reading as amended this 14th day of September, 1999.

CITY OF LAS ANIMAS


William F. Howland, Mayor

ATTEST:


Leslie J. Uncel, City Clerk

vc/je

COLORADO

C-LINE #62033
CLEAR TOPPER

